



1 dismissed due to Plaintiff's failure to file an Amended Complaint. (ECF No. 52.) To this  
2 day, Plaintiff has not filed an Amended Complaint, nor have any of the named  
3 Defendants been served with summons of any sort. Plaintiff has, however, filed a great  
4 number of frivolous motions, including: a "Motion to Quash Any Dismissal or  
5 Obstruction of Justice or Any Attempt to Refute My Points and Authorities," (ECF No.  
6 40); a "Motion for Automatic Winning of My Case," (ECF No. 30); and a "Motion to  
7 Retain Every Detail of My Documentations Except For the Remedy Request for My  
8 Supposed Salary from June 29, 2008 at Iram," (ECF No. 21).

## 9 II. DISCUSSION

10 Federal trial courts have the power to dismiss a plaintiff's action with prejudice  
11 because of the plaintiff's failure to prosecute. *Link v. Wabash R. Co.*, 370 U.S. 626, 629-  
12 32 (1962) (affirming dismissal for failure to prosecute based on attorney's unexcused  
13 failure to attend pretrial conference and other delays); *see also* Fed. R. Civ. P. 41(b).  
14 "The power to invoke this sanction is necessary in order to prevent undue delays in the  
15 disposition of pending cases and to avoid congestion in the calendars of the District  
16 Courts." *Link*, 370 U.S. at 630-31. Although dismissal is a harsh penalty, it is appropriate  
17 when a plaintiff fails to prosecute with "reasonable diligence," even in the absence of a  
18 showing of actual prejudice to the defendants due to the failure. *Anderson v. Air West,*  
19 *Inc.*, 542 F.2d 522, 524 (9th Cir. 1976).

20 This case has remained on the Court's docket even though there has not been a  
21 governing Complaint for over one year, since October 27th of last year. Magistrate Judge  
22 Johnston has given Plaintiff ample opportunity to file an Amended Complaint, but, yet,  
23 Plaintiff has failed to do so and has failed to provide any reasonable explanation for this  
24 failure. Essentially, all Plaintiff has done is file frivolous motion after motion, the  
25 number of which is evident from the sixty-two (62) docket entries in this case despite the

1 fact that no defendants have ever been served. As such, it is apparent that Plaintiff has  
2 failed to prosecute this case with reasonable diligence.

3 Nonetheless, a court must weigh five factors before dismissing a case for failure to  
4 prosecute: (1) the public's interest in expeditious resolution of litigation; (2) the court's  
5 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
6 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
7 sanctions. *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984). The public's interest in  
8 expeditious resolution of litigation always favors dismissal, *Yourish v. California*  
9 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999), while public policy normally favors  
10 disposition of cases on the merits, *Pangtalunan v. Galaza*, 291 F.3d 639, 643 (9th 2002).

11 The Court's need to manage its docket certainly weighs in favor of dismissal here,  
12 as this Court and Magistrate Judge Johnston have been forced to devote substantial  
13 amounts of time to this case, even though there is currently no controlling Complaint on  
14 file. By dismissing the case, the Court will be able to devote its time to other litigants in  
15 other cases who abide by the Court's directions and meet their deadlines. Further, the  
16 risk of prejudice to the defendants grows as each day passes without an Amended  
17 Complaint being filed and without the defendants receiving notice of the pendency of this  
18 lawsuit. As more time elapses from the date of the alleged events underlying this case,  
19 the more difficult it will be for Defendants to conduct useful discovery with regard to  
20 them.

21 Finally, dismissal with prejudice is appropriate because less drastic measures--  
22 such as warnings and the implementation of strict deadlines--have been attempted, but to  
23 no avail. Because four of the five factors weigh in favor of dismissal, and because  
24 Plaintiff has failed to prosecute the case with reasonable diligence, this case will be  
25 dismissed.

**CONCLUSION**

IT IS HEREBY ORDERED that this lawsuit is **DISMISSED with prejudice**. All pending motions are DENIED as moot.

DATED this 16th day of December, 2010.



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Gloria M. Navarro  
United States District Judge